

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CHOICE RAC, LLC,
Plaintiff,

v.

ERNESTO HERRERA and
NORA HERRERA,
Defendants.

Case No. 2:24-cv-00244-MMD-EJY

ORDER

Pending before the Court is Plaintiff's Motion to Compel Discovery and for Sanctions. ECF No. 47. No response to this Motion was filed. Under Local Rule 7-2(d) the Court may treat the failure of the non-moving party to oppose a motion as consent to grant the motion. However, this Rule does not extend to a motion for attorney's fees. *Id.*

Specifically, Plaintiff seeks supplemental responses to discovery requests as outlined first in a February 19, 2025 telephonic meet and confer and then in two follow up written communications on February 20 and 27, 2025. Thereafter, counsel for Defendants withdrew from the case and informed Plaintiff he did not know if Plaintiff's would be supplementing as requested. The Court entered a thirty (30) day stay of discovery after defense counsel withdrew providing Defendants an opportunity to obtain new counsel. No new counsel has made an appearance for Defendants and Defendants have not otherwise communicated with the Court.

Following the expiration of the thirty (30) day stay of discovery, Plaintiff served notices of deposition on Defendants, who failed to appear. Plaintiff subsequently filed an Amended Motion for Summary Judgment that, if granted will render the instant Motion moot. A response to the Amended Motion for Summary Judgment was due on June 26, 2025. None was filed.

Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's Motion to Compel Discovery and for Sanctions (ECF No. 47) is GRANTED; provided, however, this Order is stayed until such time as the Amended Motion for Summary Judgment is ruled upon. If the Amended Motion for Summary Judgment is granted in favor of Plaintiff and against Defendants such that this

1 case is resolved in its entirety in Plaintiff's favor, this Order is moot and no supplemental responses
2 will be required nor attorney's fees paid.

3 IT IS FURTHER ORDERED that if the Amended Motion for Summary Judgment is not
4 granted such that this matter is not resolved in its entirety in favor of Plaintiff, then (1) Defendants
5 **must**, within thirty (30) days after the date on which the Court issues its order on summary judgment,
6 supplement their discovery responses, and (2) Plaintiff **must** submit a memorandum of fees and
7 costs incurred relating to the preparation of the instant Motion to Compel and arising from
8 Defendants failure to participate in discovery related to written discovery and their depositions.
9 Defendants will have fourteen (14) days after Plaintiff submits its memorandum supporting fees and
10 costs to oppose Plaintiff's submission. No reply is permitted.

11 Dated this 27th day of June, 2025.

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14 ELAYNA J. YOUCHAK
UNITED STATES MAGISTRATE JUDGE
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